

GRG

GRAY, RITTER & GRAHAM, P.C.

Attorneys at Law

701 MARKET, SUITE 800
ST. LOUIS, MISSOURI 63101-1826
Facsimile 314-241-4140
314-241-5620
www.grayrittergraham.com

ddowing@grgpc.com

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By Electronic Filing

The Honorable Jesse M. Furman
United States District Court, Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

***Re: In re: General Motors LLC Ignition Switch Litigation,
14-MD-2543 (JMF); 14-MC-2543***

Dear Judge Furman:

I, Don M. Downing of the St. Louis firm Gray, Ritter & Graham, P.C. ("GRG"), respectfully apply for Lead Counsel or, alternatively, membership on the Executive Committee. In the last ten years, I have been co-lead counsel in MDLs and class actions which have resulted in over \$1.5 billion in settlements. Throughout my career in government service and private practice representing both plaintiffs and defendants, I have successfully managed scores of attorneys to successful results, and have demonstrated a consistent ability to deal respectfully and cooperatively with opposing counsel. These traits are critical to effectiveness of leadership counsel, as this Court has recognized. It also is important in nationally prominent MDLs like this one that leadership be both geographically diverse and include attorneys who have successfully litigated class action and other complex cases under laws important to their ultimate resolution. I and my firm fill these needs and meet each of the criteria set forth by the Court, as explained below.

Knowledge and Experience in Prosecuting Complex Litigation

I have extensive "knowledge and experience in prosecuting complex litigation, including MDLs and class actions." Order No. 5 at 5. I formerly served as Missouri's Chief Deputy Attorney General and as the St. Louis managing partner of one of the region's largest law firms.¹ I have represented both plaintiffs and defendants in class actions, multi-district litigation, and other complex litigation for 30 years. While at Stinson Leonard Street (1984-1992; 1996-2004), my practice focused on defending large corporations and Big Eight accounting firms in class

¹ I graduated from the University of Missouri Law School, where I served as an editor on the Law Review. From 1982 to 1984, I served as law clerk to the Honorable Edward L. Filippine, United States District Judge for the Eastern District of Missouri. In 1984, I became an associate in the firm now known as Stinson Leonard Street, moving to equity partner in 1990, and serving on the firm's managing committee.

ROBERT F. RITTER
MAURICE B. GRAHAM
STEPHEN R. WOODLEY
PATRICK J. HAGERTY
DON M. DOWNING
JOAN M. LOCKWOOD
MORRY S. COLE
GRETCHEN GARRISON
M. GRAHAM DOBBS
THOMAS K. NEILL
JASON D. SAPP
KAITLIN A. BRIDGES

KEVIN S. HANNON
OF COUNSEL

CHARLES E. GRAY
(1919-2011)

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actions and other complex commercial litigation, including MDL consumer cases. As Missouri's Chief Deputy Attorney General (1993-1995), the State's top appointed legal officer, I managed 170 assistant attorneys general and personally maintained an active trial and appellate caseload. The Missouri Attorney General's office is vested with authority to promulgate interpretative regulations and enforce Missouri's Merchandising Practices Act (the "MMPA"). I spent substantial time doing so, and have a great deal of expertise and insight into both the statutory and regulatory components of the MMPA. Two of my consumer cases resulted in the then largest consumer protection settlements in Missouri's history.²

Since joining GRG in 2004, I have been appointed one of two co-lead counsel in class actions and MDLs which collectively have resulted in over \$1.5 billion in settlements. Those cases include:

1. ***In re Genetically Modified Rice Litig.***: National co-lead counsel for thousands of rice producers and other businesses in a MDL involving contamination of the U.S. rice supply. I coordinated leadership counsel and over a dozen other lawyers who collectively invested 100,000 hours and \$5M in expenses in bringing a large international conglomerate to justice. I personally took or defended 35 of the 167 witness and expert depositions and was the lead trial counsel in three successful multi-week bellwether trials, each resulting in substantial plaintiffs' verdicts. I led negotiations resulting in payments of \$750M to 94% of U.S. rice producers. Additional settlements with affected businesses have brought total settlement payments to over \$1 billion.
2. ***Plubell v. Merck & Co., Inc.***: Co-lead counsel in a Missouri-only consumer fraud class action alleging deceptive sales practices under the MMPA with respect to Merck's marketing of Vioxx. After collectively investing 25,000 hours and \$2.3M in expenses in hotly contested litigation, and with a class trial date only a few months away, co-lead counsel and I negotiated a remarkable \$220M settlement which provided refunds of the full purchase price to every Missouri purchaser. Merck negotiated another 49-state Vioxx settlement for \$23M.
3. ***Quinn v. BJC Health System***: Co-lead counsel in action on behalf of uninsured patients against Missouri's largest health care system alleging excessive billing and other deceptive practices under the MMPA and common law. After four

² I have tried substantial cases in federal and state court and have argued cases at all appellate levels of the Missouri state and federal court systems, including in the United States Supreme Court. *See Associated Industries of Missouri v. Lohman*, 511 U.S. 641 (1994). While in both government service and in private practice, I also have taken lead roles in public interest litigation. For example, in 1996, I was the lead trial and appellate attorney in litigation that successfully challenged a Missouri law requiring presentation of photo identification for voting. *See Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006).

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years of litigation, and while class certification was on appeal, co-lead counsel and I negotiated a landmark settlement providing tens of thousands of past, present, and future patients' discounts on hospital bills as well as refunds to uninsured patients. The settlement was valued at \$267M.

4. ***Ford v. AT&T:*** Co-lead counsel in action on behalf of consumers in Missouri, Texas, Oklahoma, Kansas, and Arkansas against a large internet provider for failure to provide promised internet speeds. After years of litigation in multiple trial and appellate forums, co-lead counsel and I negotiated a \$61M settlement for consumers in the five states we represented. Consumers in the 45 other states settled for \$197M.
5. ***In re Aurora Dairy Corp. Organic Milk Marketing and Sales Practice Litig.:*** National co-lead counsel in MDL on behalf of organic milk purchasers asserting among others, claims under the consumer laws of 33 states. After dismissal on preemption grounds, the Eighth Circuit reversed in part and remanded. After additional litigation, co-lead counsel and I negotiated a \$7.5M cash settlement plus substantial injunctive and equitable relief.³

I readily acknowledge that none of these accomplishments would have occurred without the teamwork of excellent co-counsel, including GRG attorneys Gretchen Garrison and Jason Sapp whose complex litigation talents would be added to the leadership pool if I were appointed. See Attorneys at www.grgpc.com. GRG's talent pool also includes multiple award-winning attorneys with extensive experience in automobile product defect cases.⁴ During the past two decades, GRG attorneys have handled dozens of such cases, and are thoroughly familiar with the myriad of factual and legal issues that arise therein.

Team-focused Ability

Over the course of my career, I also have consistently exhibited a "willingness and ability to work cooperatively with others." Order No. 5 at 5. It is undeniably true that the role of leadership in complex litigation is a "special one," placing "a premium on professionalism . . . cooperation, professional courtesy, and acceptance of the obligations owed as officers of the court," which is

³ I have also successfully represented: thousands of consumers in class action litigation against cellular service providers; thousands of farmers in class action litigation against the USDA; and hundreds of farmers in mass tort litigation against seed providers and herbicide companies. I have a wealth of experience, developed over 30 years, representing plaintiffs and defendants in complex commercial litigation.

⁴ These attorneys include Robert Ritter, Maurice Graham, Stephen Woodley, Patrick Hagerty, Joan Lockwood and Morry Cole. See Attorneys at www.grgpc.com. See also Auto Defects/Unsafe Design at www.grgpc.com/Auto-Defects-UnsafeDesign.sht. Each is listed in one or more categories by Best Lawyers of America.

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“critical to successful management of the litigation.” Manual for Complex Litigation §10.2. My abilities in this regard are demonstrated by my many (highly successful) leadership roles in government and private practice and by acknowledgement from other legal professionals. The MDL Court in *In re Genetically Modified Rice Litigation* called the bellwether trials “well-organized and well-presented.” Memorandum and Order (Dkt. #2574; Case No. 4:06-md-01811-CDP). Opposing counsel in that hard-fought case (Mark Ferguson of Barlit Beck in Chicago) observed: “I have respect for Don as an adversary, and I like him as a person. His style is direct, passionate and very competent.” Super Lawyers, Missouri and Kansas (2012 ed.) at 12. I have been named St. Louis Plaintiffs’ “Lawyer of the Year” by Best Lawyers in America in each of the last three years in three different practice areas including Mass Tort Litigation/Class Actions. Only a single lawyer in each practice area in each community is so honored. I was included in the 2011 *Lawdragon* 500 Leading Lawyers in America, the 2014 Top 50 attorneys in St. Louis, and top 100 lawyers in Missouri and Kansas by *Missouri & Kansas Super Lawyers*. In 2013, I was selected by the U.S. District Judges to serve on the merit selection panel to appoint a new United States Magistrate Judge in the Eastern District of Missouri.⁵

Commitment and Resources

I and my firm have the “willingness and ability to commit to a time-consuming process” as well as the “resources to prosecute the litigation in a timely manner” (Order No. 5 at 5) as amply demonstrated by past commitment and litigation success. GRG has already devoted over 500 hours “in identifying, investigating or prosecuting claims” in this litigation.⁶ Order No. 5 at 5. That work includes substantial legal research, factual investigation (including a detailed review and analysis of the Valukas report), witness interviews, retention of a well-respected bankruptcy law expert, many telephone and e-mail communications with other lawyers pursuing similar claims across the country, and trips to New York and Chicago to work with other plaintiffs’ counsel and attend hearings.

I have dedicated a significant portion of my practice to leadership and prosecution of claims in the *In re Genetically Modified Rice* MDL over the preceding eight years. Almost all of

⁵ I also received the Citation of Merit from the University of Missouri Law School, the highest award given. In a nomination letter for a different award, the law school Dean stated that I “epitomized the type of outstanding attorney and human being that we all wish our graduates will one day become” and that “Don Downing’s professional accomplishments are at a level to which all attorneys aspire, but which few actually achieve.” In 2009, I was appointed by the Governor to serve on the University of Missouri’s Board of Curators and was elected that Board’s Chairman for 2014.

⁶ GRG, along with Stueve Siegel Hanson, LLP, represent putative classes of consumers in this litigation. See *Witherspoon v. General Motors LLC*, MDL Case No. 14-cv-04702 (Missouri consumers under the MMPA); *Cox v. General Motors LLC*, MDL Case No. 14-cv-04701 (consumers in the remaining 49 states.) GRG also represents six persons who suffered physical and economic injuries as a result of crashes caused by the defective ignition switch. See *Irvin v. General Motors LLC*, MDL Case No. 14-cv-05331 (pending in this litigation).

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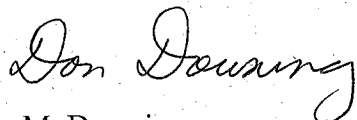
the claims in that litigation have now been resolved. I and my firm have the experience, capacity, and strong desire to now dedicate our resources to this litigation.

Knowledge of the Law

As noted above, I and my team also have extensive “knowledge of applicable law” (Order No. 5 at 5) including the MMPA, one of the strongest consumer protection laws in the country. Significantly, MMPA claims are uniquely positioned to survive dispositive motions and be certified for class treatment.⁷ Other MDL courts have recognized just that. *See, e.g., In re Sony Gaming Networks & Customer Dat Sec. Breach Litig.*, MDL 11MD2258 AJB MDD, 2014 WL 223677 (S.D. Cal. Jan. 21, 2014) (dismissing all but 8 of 45 claims including MMPA claims); *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, MDL 09-02067-NMG, 2014 WL 108197 (D. Mass Jan. 10, 2014) (certifying class under the MMPA, while rejecting class under Illinois and New York consumer protection laws). Thus, a Missouri class MMPA claim is a perfect candidate for an early bellwether trial.⁸ My appointment would provide not only geographic diversity but high level expertise in a body of law likely to be critical to a significant portion of this MDL.⁹

In conclusion, I genuinely believe that I could provide a valuable service to the Court and to all victims of GM’s wrongful conduct. I satisfy all the criteria set by the Court and the other considerations set forth above. I respectfully request appointment as Lead Counsel or, alternatively, member of the Executive Committee and an opportunity to address the Court in person at the August 11, 2014 Initial Conference.

Very truly yours,



Don M. Downing

⁷ *Plubell v. Merck & Co., Inc.*, 289 S.W.3d 707 (Mo. App. 2009) illustrates the strength of Missouri’s consumer protection law. *Plubell* affirmed the trial court’s certification of a consumer class of Missouri Vioxx purchasers under the MMPA. I am unaware of any other state Vioxx consumer class similarly certified for litigation, and as stated above, the 49-state settlement was less than 11% of the Missouri-only settlement. I served as co-lead counsel in *Plubell*.

⁸ In addition to the strong likelihood that Missouri consumer claims will be certified for class treatment, it has been publicly reported that Missouri has a disproportionately high number of persons who purchased or leased GM automobiles of the type at issue in this litigation.

⁹ I and my team also have experience litigating consumer cases under many states’ laws. *See, e.g., In re Aurora Dairy, supra* (consumer claims made under the laws of 33 states); *Ford v. AT & T, supra* (consumer claims made under the laws of five states). In addition and as explained above, GRG attorneys have extensive knowledge and experience addressing the myriad of factual and legal issues that arise in automobile defect cases.